IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Regular Second Appeal No. 2222 of 2004

Date of decision: March 2, 2007.

Maharishi Daya Nand University Rohtak

.....Appellant.

Vs.

Sudesh Kumari

.....Respondent.

Present: Mr. Ramesh Hooda, Advocate for the appellant.
Mr. Narender Hooda, Advocate for respondent.

JUDGMENT

M.M.Aggarwal, J.

Sudesh Kumari respondent, who was working as Senior Clerk Grade -II in Maharishi Dayanand University, Rohtak, had filed suit for declaration with consequential relief of permanent injunction, which was dismissed by Addl. Civil Judge (Senior Division), Rohtak. She had filed appeal, which was allowed vide judgment dated 19.2.2004 of Addl. District Judge, Rohtak. Vide that judgment, order dated 12.2.1998 of the University, vide which post of the plaintiff-respondent was declared vacant, was set aside and defendant University was directed to afford an opportunity to the plaintiff

to submit her defence and then the University was to decide the question of her absence and entitlement of wages etc afresh.

The facts of the case are that Sudesh Kumari had proceeded on maternity leave from 9.11.1996. She was to report on 8.5.1997. She started sending applications and did not join duty. She was treated to be absent from duty w.e.f. 14.6.1997. Then a publication was issued in the Tribune dated 9.1.1998 asking her to report for duty to receive charge-sheet and to submit her defence within 15 days from the date of Publication, failing which it would have been deemed that she is willfully absent from duty and her post would automatically stand vacated.

According to Sudesh Kumari, she had gone to join duty on 23.1.1998. Then there was a strike in the University. She submitted joining report on 27.1.1998 and the same was not accepted.

Impugned order dated 12.2.1998 of the Registrar of the University shows that she had submitted report on 27.1.1998 after expiry of the notice period and, therefore, that report was not accepted by the Vice Chancellor and, as such, her post was declared vacant w.e.f. 14.6.1997 under Clause 7(ii) of the University Leave Regulations.

When notice was issued on 9.1.1998 giving 15 days time for reporting, then respondent-plaintiff could very-well report on 24.1.1998. It is admitted position that 24th, 25th and 26th January, 1998 were Gazetted holidays in the University. If she had submitted her report on 27.1.1998 then it cannot be said that she had not complied with the notice issued in the Newspaper on 9.1.1998. Her post as such could not be declared to have fallen vacant only because she did not appear and submit reply within 15 days of the publication.

Notice published on 9.1.1998 shows that she had been called upon to report for duty to receive the charge-sheet and to submit her defence within 15 days from the date of publication. If she had reported on 27.1.1998, then University was to serve charge-sheet and take her defence. It may be that the University will be at liberty to take any disciplinary action in accordance with rules/ law, but her post straight-away could not be said to have fallen vacant and she could not straight-away be thrown on the road.

However, it comes out from documents Exhibits D-1 to D-20 placed on the file of the trial Court and proved by the official of the University that plaintiff, now respondent Sudesh Kumari, was treated absent from duty. Notices were issued to her to join but she had refused service. Then charge-sheet was drawn and efforts were made to effect service of the charge-sheet, which again she refused to accept and ultimately service through publication in the Tribune dated 9.1.1998 was sought to be effected so that the post may be declared vacant under Clause 7(2) of the University Leave Regulations. Document Exhibit D-9 shows that she had come to submit her joining report, which was not accepted and the impugned order was made.

The Additional District Judge, while setting aside order dated 12.2.1998, had permitted the University to proceed with the inquiry etc. He had directed the University to afford an opportunity to the plaintiff -respondent to submit her explanation and then to decide her case of absence afresh and her entitlement to wages etc.

When Sudesh Kumari appears to have wilfully absented and then refused to take notices to join duty or copy of charge-sheet etc and then publication in the newspaper had been made, which would have been done to

secure her presence, it may not be necessary for the University to reinstate her pending inquiry.

In these circumstances, I hold that University may not reinstate the appellant till decision of her absence or disciplinary proceedings are taken, which be completed within six months.

Appeal stands dismissed with above observations,

(M.M.Aggarwal)
Judge

March 2, 2007
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